

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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MILTON MUSA PACHECO,

Plaintiff,

- v -

Civ. No. 9:05-CV-998  
(LEK/RFT)

MARIO De ACEVEDO, *et al.*,

Defendants.

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**APPEARANCES:**

**OF COUNSEL:**

MILTON MUSA PACHECO  
79-B-0064  
Upstate Correctional Facility  
P.O. Box 2001  
309 Bare Hill Road  
Malone, New York 12953

HON. ANDREW M. CUOMO  
Attorney General of the State of New York  
Attorney for Defendants  
New York State Department of Law  
The Capitol  
Albany, New York 12224

JAIME IRENE ROTH, ESQ.  
Assistant Attorney General

**RANDOLPH F. TREECE**  
**United States Magistrate Judge**

**ORDER**

After reviewing the Docket, the Court notes that the Summons issued for Defendant Focunier was returned unexecuted on December 21, 2005, with an explanation that there is no employee at the facility by that name. Dkt. No.20. It is unclear what efforts Plaintiff has undertaken to ensure that Defendant Focunier is properly joined in this action.

Under Federal Rule of Civil Procedure 4(c)(1), the Plaintiff is responsible for service of the Summons and Complaint for each Defendant within a specified time period. Specifically, the

Plaintiff must effectuate service of process within 120 days of the filing of the Complaint. FED. R. Civ. P. 4(m).<sup>1</sup> Failure to properly serve any Defendant in accordance with the Federal Rules will result in the Court, upon motion or on its own initiative, to dismiss the case without prejudice as to that Defendant. *Id.* Thus, **Plaintiff shall within forty-five (45) days of the filing date of this Order submit an affidavit to the Court.** Such affidavit shall 1) detail his efforts to serve and/or properly identify Defendant Focunier; 2) state whether he intends to pursue his action against Defendant Focunier; and 3) establish good cause for his failure to timely effectuate service of process on Defendant Focunier. Failure to provide an affidavit with all of the above information will result in the Court recommending dismissal of Defendant Focunier.

**WHEREFORE**, based upon the foregoing, it is hereby

**ORDERED**, that **within forty-five (45) days of the filing date of this Order**, Plaintiff shall submit an affidavit to the Court detailing his efforts to serve and/or properly identify Defendant Focunier, stating whether he intends to pursue his action against Defendant Focunier, and establishing good cause for his failure to properly serve Defendant Focunier. Plaintiff's failure to submit this affidavit and show good cause for his failure to serve this Defendant within the time allotted by Rule 4 will result in this Court recommending dismissal of such Defendant; and it is further

**ORDERED**, that if upon the expiration of forty-five days Plaintiff fails to submit such affidavit, the Clerk of the Court shall notify this Court at which point a recommendation for dismissal of the unserved Defendant shall be issued to the District Judge; and it is further

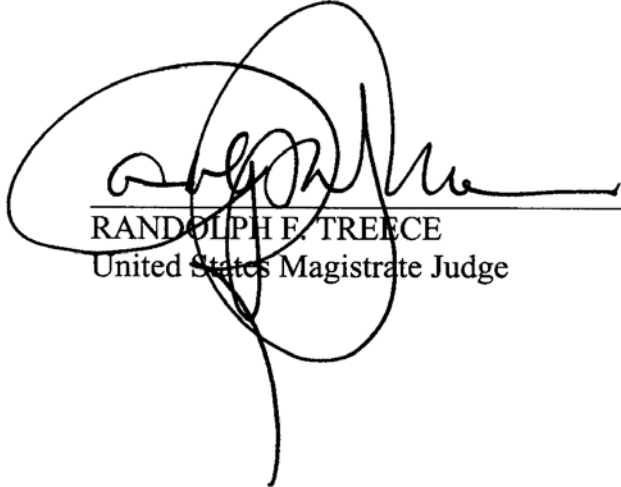
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<sup>1</sup> Under the Local Rules of Practice for the Northern District of New York, a Plaintiff must effectuate service within sixty (60) days. N.D.N.Y.L.R. 4.1(b).

**ORDERED**, that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED

Date: June 12, 2007  
Albany, New York



RANDOLPH F. TREECE  
United States Magistrate Judge

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